

## Federal Acquisition Regulation

## 12.602

### **12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.**

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

(1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see subpart 19.2).

(2) 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see subpart 3.8).

(3) 41 U.S.C. 43, Walsh-Healey Act (see subpart 22.6).

(4) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see subpart 27.4).

(5) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see subpart 3.4).

(6) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (15.209(b)).

(7) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see subpart 5.2).

(8) 41 U.S.C. 418a, Rights in Technical Data (see subpart 27.4).

(9) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see subpart 23.5).

(10) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see subpart 47.5) (inapplicability effective May 1, 1996).

(11) 49 U.S.C. 40118, Fly American provisions (see subpart 47.4).

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, *et seq.*, (see Subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

(c) The applicability of the following laws have been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see subpart 3.5).

(2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see subpart 15.4).

(3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

[60 FR 48241, Sept. 18, 1996 as amended at 61 FR 67418, Dec. 20, 1996; 62 FR 232, 236, Jan. 2, 1997; 62 FR 51270, Sept. 30, 1997; 64 FR 72416, 72418, Dec. 27, 1999; 65 FR 46069, July 26, 2000]

### **Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items**

#### **12.601 General.**

This subpart provides optional procedures for—

(a) Streamlined evaluation of offers for commercial items; and

(b) Streamlined solicitation of offers for commercial items for use where appropriate.

These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.

#### **12.602 Streamlined evaluation of offers.**

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212-2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in part 13, contracting officers are not required to describe the relative importance of evaluation factors.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how